STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of CAROLYN ANN WINGATE, BOBBI LYNN WINGATE, JENNIE LYNN FLICK, and ZANE RYAN FLICK, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GERALD ROBERT FLICK, JR.,

Respondent-Appellant,

and

STACEY FLICK,

Respondent.

UNPUBLISHED
December 19, 2000

No. 223210
Clare Circuit Court
Family Division
LC No. 98-000087-NA

Before: Murphy, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from a family court order terminating his parental rights to the minor children under MCL 712A.19b(3)(a)(ii) and (c)(i); MSA 27.3178(598.19b)(3)(a)(ii) and (c)(i). We affirm.

Respondent-appellant claims that the family court erred in assuming jurisdiction over him solely on the basis that he admitted being incarcerated at the time the petition was filed.[1]

[1] Respondent incorrectly argues that the family court erred in assuming jurisdiction over *him* when the appropriate inquiry is whether "the proceeding is of a class the court is authorized to adjudicate and the claim stated in the complaint is not clearly frivolous." *In re Hatcher*, 443 Mich 426, 444; 505 NW2d 834 (1993). A valid exercise of jurisdiction in a child protection proceeding is determined from the contents of the petition after the judge or referee finds probable cause to believe that allegations contained in the petition are true. *Id.* at 437, 444.
(continued…)

However, respondent-appellant may not collaterally attack the family court's exercise of jurisdiction in an appeal as of right from the order terminating parental rights. *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993); *In re Powers*, 208 Mich App 582, 587-588; 528 NW2d 799 (1995). To challenge the family court's assumption of jurisdiction over a termination proceeding, respondent-appellant was required to directly appeal the family court's jurisdictional decision or request a rehearing of the ruling within twenty days of the order terminating parental rights. MCL 712A.21; MSA 27.3178(598.21). Accordingly, respondent-appellant may no longer challenge the family court's exercise of jurisdiction and we decline to consider this claim.

Next, respondent-appellant claims that his due process rights were violated when the family court failed to appoint him an attorney as prescribed by MCR 5.915(B). We disagree. This Court has previously held that MCR 5.915(B) "requires affirmative action on the part of a respondent in order to have an attorney appointed at statutory review hearings." *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991).[2] Further, the right to counsel may be waived or relinquished under MCR 5.915(B)(c) by a respondent's actions. *Id.* In this case, a review of the record reveals that respondent-appellant failed to request an attorney or otherwise demonstrate his desire for an attorney to the family court after his appointed counsel was released, despite the court's order requiring him to specifically request an attorney upon his return to Michigan. Thus, respondent-appellant effectively waived or relinquished his right to counsel until such time as he reasserted his right for purposes of this appeal. *In re Hall, supra*.[3]

Affirmed.

/s/ William B. Murphy
/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder

(…continued)

Because respondent-appellant admitted that the allegation against him in the petition was true, jurisdiction over this proceeding was proper.

[2] Respondent-appellant's reliance on *People v Brown*, 49 Mich App 358; 212 NW2d 55 (1973), is misplaced because that case was decided under the former version of the court rule, JCR 1969, 6.3(A)(2)(b), which required that counsel be appointed *on the court's own motion* to indigent respondents in a termination proceeding. The court rule has since been amended to clearly state that a respondent in a termination proceeding has the right to a court-appointed attorney *upon request* or after demonstrating a desire for an attorney. MCR 5.915(B). Thus, under the current version of the court rule, a family court is no longer required to sua sponte appoint counsel in termination proceedings; rather, parents are charged with some responsibility for having counsel appointed for their benefit in child protection proceedings. *In re Hall, supra* at 222.

MCR 5.915 was again amended on October 1, 1995 and April 1, 1998; however, MCR 5.915(B) was not changed.

[3] To the extent respondent-appellant alleges a constitutional due process violation, we find that he has abandoned the issue by failing to cite any authority in support of an alleged constitutional violation. *In re Powers, supra* at 588.